

Competition and Markets Authority

3 September 2024

Dear Madam or Sir

Draft rules of procedure and guidance for energy code modification appeals consultation

We welcome the opportunity to make this submission to the above named consultation. This is a non-confidential response on behalf of Centrica Group.

We support your proposals to update and streamline the existing rules of procedure and guidance for energy code modification appeals (the Rules and Guide). We consider that the proposed amendments broadly intend to improve the transparency and efficiency of code modification appeals.

Providing information to persons with standing to appeal

The prescribed appeal time periods, although designed to provide the CMA with sufficient time to consider and determine an appeal, present significant challenges to applicants and prospective interveners. It is important that materially affected parties be provided with the opportunity to participate effectively, by being notified promptly following the submission of a notice of appeal and being provided with key submissions in good time. This better assists the CMA in disposing of appeals fairly, efficiently and at proportionate cost. We note that applicants are under a strict obligation to send a copy of the appeal notice to persons they consider may be affected, within 1 working day of submission of the notice. GEMA holds a privileged position concerning knowledge of persons who may be materially affected by its decisions, however under the legislative rules is not required to inform applicants of those other persons unless it chooses to. Although the proposed amendments to the Rules and Guide assists by encouraging GEMA to keep a list of persons who should be kept informed of any appeal shortly after making an appealable decision. We would ask that the Rules and Guide also encourage GEMA not only to prepare a list of affected persons, but promptly share the list when required.

GEMA's crucial role during the earlier stages of an appeal also extend to promptly and effectively working with applicants and prospective interveners to ensure parties have appropriate information. We would therefore request that the CMA places an expectation of a high degree of collaboration between parties, which may include appropriate sharing of non-sensitive information at the earliest opportunity.

Reflecting current use of technology

We support the proposed changes to reflect the greater use of technology such as electronic document management and file sharing, which in turn encourages more efficient ways of working. This however may be undermined if the technologies used are not fit for purpose, delay parties or cannot be easily accessed. We would therefore recommend that the CMA seeks to take feedback from users of its technological platforms and reviews them in light of relevant good practice and developments.

Appeals within the CMA's jurisdiction

The Electricity and Gas Appeals (Designation and Exclusion) Order 2014 (the Order), as reflected in the Guide, list the energy codes that may be subject to an appeal. Two of the energy codes designated under the Order, the Master Registration Agreement (the MRA) and the Supply Point Administration Agreement (the SPAA) have been consolidated to form the Retail Energy Code (REC). The REC is not designated under the Order and it is uncertain whether GEMA decisions to modify the REC are appealable to the CMA.

GEMA's delivery of energy code reform under the Energy Act 2023 increases the likelihood of further code consolidation or the creation of new energy codes. This will further exacerbate current uncertainty regarding applicable routes of appeal. While we do not believe this is within the scope of the current consultation, this issue has the potential to undermine the CMA's efforts to clarify and streamline the appeals process. We would therefore request that the CMA seeks to address this uncertainty with GEMA and Government as soon as practicable.

We would be happy to discuss any of the above with you if that would be helpful.

Yours faithfully

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